

EXHIBIT 12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JOSHUA CHATWIN,)
) CASE NO.
PLAINTIFF,) 2:14-cv-00375
)
Vs.)
)
DRAPER CITY; OFFICER J. PATTERSON,)
IN HIS INDIVIDUAL AND OFFICIAL)
CAPACITY; OFFICER DAVID HARRIS, IN)
HIS INDIVIDUAL AND OFFICIAL)
CAPACITY; OFFICER HEATHER BAUGH, IN)
HER INDIVIDUAL AND OFFICIAL)
CAPACITY; AND JOHN DOES 1-10.)
)
DEFENDANTS.)
)

Videotaped Deposition of Trevor Petersen

Taken: July 13, 2016

Reported by: Linda J. Smurthwaite, RDR

Intermountain Court Reporters
Murray, UT 84107
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1 other discipline while you were with Weber County
2 Sheriff, besides what you've described?

3 A. No, I did not.

4 Q. Prior to being employed with Weber County
5 Sheriff's office, you were employed with the Kane County
6 Sheriff's office, correct?

7 A. That is correct.

8 Q. And you were with them from September of 2000
9 to May of 2002?

10 A. That is correct.

11 Q. Were you ever disciplined by the Kane County
12 Sheriff's office?

13 A. No, I was not.

14 Q. Prior to that employment you were employed by
15 the Utah State Parks and Recreation from March of 2000 to
16 September of 2000?

17 A. That is correct.

18 Q. Were you ever disciplined while you were with
19 the Utah State Parks and Recreation?

20 A. No, I was not.

21 Q. And my understanding was that that was your
22 first law enforcement job; is that correct?

23 A. As a certified law enforcement officer, yes.

24 Q. Why did you leave Utah State Parks and
25 Recreation?

1 A. Yes, sir.

2 Q. You'd agree with me that none of those things
3 that are listed there, have anything to do with respect
4 to the assignment that you were given in this case?

5 MS. MARCY: Objection, form.

6 THE WITNESS: That is not correct. The less lethal
7 training that I performed with the deployment of less
8 lethal munitions, chemical munitions, noise/diversion
9 devices, specifically pertain to use of force.

10 Q. That was during August of 2011?

11 A. That is when I created the Power Point. I
12 was a actual certified instructor through the National
13 Tactical Officers Association. I believe I received that
14 certification in September of 2006.

15 Q. I want to ask you specifically what that
16 training entailed. What did that training entail?

17 A. It was in Burbank, California where they
18 were --

19 Q. No, I want to ask you specifically about the
20 training that you've listed here, that you did for the
21 Weber Metro SWAT?

22 A. Oh, okay. So, sorry, I didn't understand
23 your question. You want me to talk about the training
24 that I instructed, or the training that I received to
25 become an instructor?

1 Q. You would agree with me that sitting here
2 today, the only thing you can recall is conducting one
3 training class involving the use of force involving
4 individuals under the influence of alcohol?

5 MS. MARCY: Objection, form.

6 THE WITNESS: To clarify, are you talking one
7 subject, or several training classes, separate training
8 classes?

9 BY MR. HAMILTON:

10 Q. Well, I'm using your verbiage here from your
11 report.

12 A. Yes, I have done several classes under the
13 same subject.

14 Q. So, during that period, or when you were
15 talking or testifying earlier, you were talking about
16 providing that training course multiple times?

17 A. Yes, sir.

18 Q. So you provided that training class multiple
19 times?

20 A. That is correct.

21 Q. Over a period between sometime in 2005, 2006?

22 A. To the best of my knowledge, yes.

23 Q. How many times did you provide that training
24 class?

25 A. I don't recall.

1 Q. Was it a situation where you trained one day
2 because half the department was able to come to training
3 that day, and then you did the same training the
4 following week when the other portion of the department
5 could be there?

6 MS. MARCY: Objection, form.

7 THE WITNESS: It could have been actual law
8 enforcement officers, and it also involved police academy
9 students at Weber State University.

10 BY MR. HAMILTON:

11 Q. So when you were talking about doing this
12 training class, you did it for not only the Weber County
13 Sheriff's department, but you also did it for the police
14 academy at Weber State?

15 A. That is correct.

16 MS. MARCY: Objection, form.

17 BY MR. HAMILTON:

18 Q. And how did that specific class or that
19 training deal with how you use, or when you use force
20 with individuals that are intoxicated?

21 MS. MARCY: Objection, form.

22 THE WITNESS: You have to identify the -- their
23 coherent state of mind, also their abilities, dealing
24 with their reaction times. And there is actually a
25 portion -- let me finish answering your question then I

1 can go back to that.

2 Just -- as I recall, those are the things that we
3 discussed. It's --

4 Q. So you have to determine their reaction time.
5 How do you determine their reaction time?

6 A. Well, there's actually scientific data.
7 That's what I was going to add to my statement, is in my
8 use less lethal class. I discuss alcohol responses to
9 different chemical munitions, and noise/flash diversion
10 devices that can actually, with an intoxicated person,
11 gives you actually more time than with a normal person
12 that's not intoxicated, as far as their delayed responses
13 and so forth.

14 Q. Okay. So now we're going back to the less
15 than lethal munition training?

16 A. That is correct.

17 Q. I want to specifically focus in on the 2005,
18 2006 training that you can recall doing regarding
19 training cadets at Weber State University, and training
20 Weber County Sheriff's office regarding the use of force
21 involving individuals that were under the influence.
22 What did that training entail specifically about when to
23 use force with people that were intoxicated?

24 A. To the best of my knowledge, it's what we
25 already discussed. Identifying that these individuals

1 are intoxicated, that -- handling them, establishing
2 their demeanor, body language, and so forth.

3 Q. And how would their -- I guess I'm trying to
4 understand what the impact of a person being intoxicated
5 has on your use of force. What were you training them to
6 do? If the person was intoxicated, use less force,
7 different types of use of force, tools?

8 A. It was all scenario-based training, so every
9 situation was different.

10 Q. Been going for about an hour at this point,
11 I'd like to take a break.

12 (Off the record at 10:07)

13 (Returning on the record at 10:26)

14 BY MR. HAMILTON:

15 Q. Sir, I want to go back to something I asked
16 you earlier on. I talked to you a little bit about the
17 communications you had with Ms. Marcy, and I asked you
18 whether she ever asked you to assume certain things, make
19 certain assumptions as you were doing your analysis, or
20 rely upon certain facts as she provided to you, or data,
21 and you said that you couldn't recall, is that correct?

22 A. I believe so.

23 Q. So, it could have happened, Ms. Marcy could
24 have told you to assume certain things during those 12 to
25 15 email communications that you had with her, and those

1 Q. You would agree that there is nothing that
2 indicates that he wasn't highly intoxicated?

3 A. According to the information I was given,
4 yes.

5 Q. So yes, you'd agree with that?

6 A. Yes, in my opinion.

7 Q. Okay. And would you agree with me that if
8 the search was done of Mr. Chatwin on the grass, that
9 that would have been safe?

10 MS. MARCY: Objection, form.

11 THE WITNESS: Safer than on the concrete, yes.

12 BY MR. HAMILTON:

13 Q. And you wouldn't fault the officers for doing
14 that search on the grass, true?

15 A. No, I wouldn't.

16 Q. Is it really your whole opinion regarding
17 safety, really does it just boil down to the fact that he
18 was taken on to the concrete surface?

19 A. No.

20 Q. What else does it include?

21 A. Having multiple officers to assist with
22 handling Mr. Chatwin.

23 Q. What do you mean by multiple officers?

24 A. You have two sworn Draper City police
25 officers on scene, Officer Harris and Officer Patterson.

1 You also have a animal control officer, who I believe was
2 Officer Balm. It's my opinion that if you have multiple
3 individuals there to assist with taking an intoxicated
4 person, as they put in their reports is barely capable of
5 standing on his own, why wouldn't you use those multiple
6 individuals to assist this highly intoxicated person to
7 the vehicle to prevent him from harming officers and/or
8 himself?

9 Because at this point, to go and search Mr.
10 Chatwin's vehicle, there are no other individuals inside
11 the vehicle. There is no urgency, there is no threat of
12 the vehicle harming them. The highest safety
13 consideration is Mr. Chatwin himself.

14 Q. So really, wouldn't you agree with me that
15 your main critique is that this whole situation basically
16 could have been avoided if they would have done the
17 search there on the grass, and just put him in the prone
18 position there on the grass?

19 A. Could have put him in a prone, could have put
20 him in a kneeling position. A second officer could have
21 helped stabilize him. You could have done -- each
22 officer take a side of Mr. Chatwin, and conduct the
23 search of his person for any weapons or contraband.
24 There you have two individuals helping support him, and
25 if he's unable to be supported, then yes, you can put him

1 in a kneeling position or in a prone position.

2 Q. Again, though, I'm trying to understand, I
3 mean, you make this critique that they didn't adequately
4 look out for the safety of Mr. Chatwin, and the other
5 officers involved. And it seems like your main critique
6 is, and that you're basically saying, if they would have
7 done the search and put the person in a prone or kneeling
8 position there on the grass, Mr. Chatwin, this whole
9 incident could have been avoided. Is that what you are
10 saying?

11 A. Not everything to that extent. But as I'd
12 mentioned before, if Officer Harris would have assisted
13 Officer Patterson with escorting Mr. Chatwin to the
14 vehicle and securing him, if they did the search on the
15 grassy area, they didn't need to do a secondary search on
16 the concrete next to the vehicle.

17 Q. So your whole critique about the search and
18 it not being safe, is your assumption that there was a
19 second search done by the truck?

20 MS. MARCY: Objection.

21 MR. HAMILTON: Or that there was a search done by
22 the truck?

23 MS. MARCY: Objection, form.

24 THE WITNESS: No. There are two contradicting
25 information in here pertaining to Kathy Torrence's

1 safety issue, right?

2 MS. MARCY: Objection, form.

3 THE WITNESS: Not entirely, no.

4 BY MR. HAMILTON:

5 Q. But your opinion is that if they would have
6 done the search there, and they would have just left him
7 on the grass in a kneeling position, and then escorted
8 him to the truck, the whole incident could have been
9 avoided?

10 A. No, sir. Those are options that could have
11 happened.

12 Q. Well, you state right here that that's your
13 opinion.

14 A. Yes, sir.

15 Q. All right. Is it your opinion or not your
16 opinion?

17 A. It is my opinion, but there's other
18 circumstances involved in it to where that's not my
19 complete statement involving the totality of the
20 circumstances.

21 Q. Okay. With respect to safety and this
22 critique that you have, I asked you what your methodology
23 was coming to that opinion. And you went on and kind of
24 explained some of the facts that you looked at and
25 considered?

1 A. Yes, sir.

2 Q. But I'm trying to understand your methodology
3 to reach that opinion. Did you just look at those facts
4 and that led to the opinion, or did you use your
5 experience? How did your experience play into
6 formulating that opinion? Can you explain that to me?

7 MS. MARCY: Objection, form.

8 THE WITNESS: Training and experience, sir.

9 BY MR. HAMILTON:

10 Q. How did your training and experience help you
11 formulate that opinion?

12 A. My experience of dealing with multiple
13 individuals, taking multiple individuals into custody,
14 whether it was an intoxicated level under the influence
15 of drugs or other narcotics. Excited delirium. Also
16 evaluating these types of incidents with the Weber County
17 use of force committee for several years, and evaluating
18 officers' use of force. As well as anything from arrest
19 control tactics to using lethal force, using impact
20 weapons, using chemical munitions, using different types
21 of techniques and tactics to use to take somebody into
22 custody.

23 Q. What was the standards, at that time that the
24 incident took place, regarding safety and how to take
25 someone that was intoxicated into custody safely? What

1 just want to make sure, since you are relying on your
2 experience. What is your specific experience dealing
3 specifically relating to the safety procedures that
4 should be followed while taking a person into custody
5 that's intoxicated, safely?

6 A. It deals with safety of the officers as well
7 as the arrestee himself, and other citizens and
8 bystanders.

9 Q. I apologize, maybe the question was
10 confusing. But what is your experience in that area?

11 A. Taking --

12 Q. What experience were you drawing upon as you
13 formulated that opinion?

14 A. Life experience as a police officer, as well
15 as working as a certified instructor, as well as working
16 as an evaluator on the use-of-force committee with the
17 Weber County Sheriff's office.

18 Q. Let me ask it a different way. How would you
19 explain that your experience qualifies you to know more
20 about police safety procedures than a person without your
21 experiences?

22 A. Because I've actually done it in real life.
23 I've had to consider my safety as well as the safety of
24 other officers, as well as the safety of the person that
25 I was taking into custody.

1 methodology used by police practices experts?

2 A. Well, it's based on my training and
3 experience.

4 Q. So you think police practice experts just use
5 their training and experience?

6 A. Well, the training that has been given to me
7 has been certified or accredited through Police Officer
8 Standards and Training, or at the time Weber County
9 Sheriff's office was a CALEA accredited law enforcement
10 agency, which is a nationally recognized accreditation
11 nationally, who comes in and actually evaluates our SOPs,
12 our standard practices, and evaluates and makes sure that
13 Weber County Sheriff's office was to the national
14 standard.

15 Q. But you're specifically saying this is the
16 standard methodology used by someone with my training and
17 experience, right?

18 A. Correct.

19 Q. How did you get that understanding? Did you
20 talk to other people that have been police practice
21 experts?

22 A. I would assume that the CALEA accreditation
23 holds you to a national standard, holds you to a level to
24 where it's nationally recognized and accepted throughout
25 the nation.

1 Q. Sir, what I'm getting at is this is your
2 first time ever being a commercial expert, correct?

3 A. Correct.

4 Q. This is the first time you've ever written a
5 report, correct?

6 A. No, sir.

7 Q. An expert report?

8 A. Yes, sir.

9 Q. Sorry. First time you've ever written an
10 expert report, first time you've ever been retained as an
11 expert commercially on police practices, correct?

12 A. Yes, sir.

13 Q. And you're saying here that your methodology
14 is the standard methodology used in the field, true?
15 That's what you're stating here?

16 A. Yes, sir.

17 Q. How did you come to that conclusion that it's
18 the standard methodology?

19 MS. MARCY: Objection, form.

20 THE WITNESS: Because of what I had just explained
21 before. That these practices were nationally accredited,
22 and we use them to evaluate our own officers within Weber
23 County Sheriff's office on use of force.

24 Q. Okay. So the training that you received from
25 CALEA, did they say this is the methodology used to make

1 a determination of whether their use of force is
2 reasonable or not reasonable?

3 A. No, they did not.

4 Q. Or follows the standard practice?

5 A. It is my understanding that as a CALEA
6 accredited law enforcement agency, that as long as we
7 meet these standards, then that's the accepted practices
8 nationwide. So that is my opinion of that being a
9 standard methodology.

10 Q. Did you use, in your time as a certifiable
11 police officer, law enforcement officer, did you actually
12 ever go to any training about how to evaluate officers
13 use of force and whether it was, or met the standard?

14 MS. MARCY: Objection, form.

15 THE WITNESS: I attended a SWAT commander's
16 decision-making course that was performed by the National
17 Tactical Officer's Association that dealt with the
18 decision making on use of force issues, as a SWAT
19 commander, as well as it would also relate to any other
20 types of law enforcement response.

21 Q. Let's start with this phase. During your
22 time as a certifiable law enforcement officer, did you at
23 any point in time have the occasion to evaluate officers
24 use of force and make a determination of whether their
25 use of force was appropriate to the standard practices in

1 the field of law enforcement?

2 MS. MARCY: Objection, form.

3 THE WITNESS: Could you please repeat that
4 question.

5 MR. HAMILTON: Sure.

6 Q. During the entire time that you were an
7 officer, law enforcement officer --

8 A. Yes, sir.

9 Q. -- did you ever have the occasion to review
10 another officer's use of force and make a determination
11 or evaluate whether their use of force was reasonable or
12 met the general standard for use of force?

13 A. Yes.

14 Q. When was that?

15 A. The last one was in, I want to say 2010 or
16 2011, when the Grand County Sheriff or Grand County
17 attorney's office contacted the Weber County Sheriff's
18 office with the incident involving Brody Young, who was
19 the state park ranger who was shot multiple times in
20 Moab, Utah. They requested that Weber County assist with
21 the investigation. I was assigned as use-of-force
22 investigator to evaluate whether or not Brody Young used
23 the appropriate force in discharging his duty weapon.

24 Q. Okay. Besides that one occasion, did you
25 ever have any other occasions where you --

1 A. Yes, sir.

2 Q. How many occasions?

3 A. As I recall, on the use-of-force committee
4 with the Weber County Sheriff's office, we would meet
5 quarterly, and we would have a list of all the incidents
6 that officers used force, and we would evaluate those.

7 Q. How long were you on that committee?

8 A. To the best of my recollection, a couple
9 years. Two years, maybe.

10 Q. During that two-year period, during your
11 quarterly meetings, can you give me an estimate of how
12 many cases you actually evaluated?

13 A. To the best of my recollection, I believe
14 there was anywhere from 60 to 100 a quarter.

15 Q. And you say a quarter?

16 A. Correct.

17 Q. So are you saying that there was -- there
18 could have been as many as 400 a year that you evaluated?

19 A. Possibly, yes.

20 Q. And what did you do when you evaluated those
21 use-of-force incidents?

22 A. We evaluate all the information involved in
23 the reports, which can include injuries to officers
24 and/or the individual being arrested. The level, the
25 mental or the physical condition of the individual being

1 arrested, what types of force was used, whether it was
2 soft or hard-hand techniques, aerosols, tasers, impact
3 weapons. They varied in all different aspects of use of
4 force.

5 Q. How many people sat on the committee?

6 A. I don't recall.

7 Q. So were you personally evaluating all those
8 cases each quarter?

9 A. Yes, I was part of the committee.

10 Q. Okay. And as a member of the committee, did
11 you evaluate every case or was there assignments made
12 that you would evaluate?

13 A. No, as the committee, every single one of us
14 went through each case.

15 Q. Okay. And when you were trying to make those
16 determinations on whether the use of force was
17 appropriate, what did you do? What did you rely upon to
18 make that determination?

19 MS. MARCY: Objection, form.

20 THE WITNESS: Training and experience.

21 BY MR. HAMILTON:

22 Q. Just so it's clear in my mind about what you
23 did after being retained as an expert in this case, it's
24 true you never spoke to any other police practices expert
25 about how to put together a police -- or one of these

1 Q. How do you know that to be true?

2 A. Well, when I worked for the United Nations, I
3 was actually training police officers in Haiti on use of
4 force.

5 Q. Were you sitting on a review board during
6 that period of time?

7 A. No, but it's safe to assume that if I am
8 teaching off of their standards, that they would hold the
9 same accountability for violating those standards.

10 Q. And when you say that you were training
11 Haitian officers regarding use of force, when was that?

12 A. That was in 2014 to '15.

13 Q. What were you training them?

14 A. I was actually assigned to the Haitian SWAT
15 team, and I also trained the Jordanian SWAT team in
16 Haiti. Part of my job was to go out on operations and
17 evaluate any type of human rights violations, or
18 use-of-force violations.

19 Q. So during that period of time you were
20 evaluating use of force --

21 A. Correct.

22 Q. -- incidents?

23 A. Correct.

24 Q. Did you list that you were sitting on an, or
25 reviewing use-of-force incidents with respect to your

1 opinion with respect to that language, aren't you?

2 A. Yes, sir.

3 Q. And you're really not qualified to do that,
4 are you?

5 MS. MARCY: Objection, form.

6 THE WITNESS: What qualifications would that be? I
7 don't understand the question.

8 BY MR. HAMILTON:

9 Q. I mean, you don't have a master's degree in
10 English?

11 A. No, sir.

12 Q. You are not a linguist.

13 A. No, sir.

14 Q. You're just basically critiquing his verbiage
15 without any real expertise in that area, true?

16 A. Yes, sir.

17 Q. You're just looking on Wikipedia?

18 A. Yes, sir.

19 Q. And with respect to you using the term
20 'thrown to the ground', you are just relying upon what
21 Kathy Torrence testified to, correct?

22 A. Yes, sir.

23 Q. And you're disregarding what Officer
24 Patterson stated in his report, and testified under oath
25 to, true?

1 A. Not to the extent of disregarding, just the
2 totality of the circumstances, the injuries that were
3 sustained, and the language that he provided. In my
4 opinion those two things don't add up.

5 Q. What are you basing that opinion on?

6 A. Experience.

7 Q. What type of experience?

8 A. Placing somebody to the ground or taking
9 somebody into custody, several years of working as a law
10 enforcement officer, reviewing --

11 Q. You'd agree with me these are all factually
12 --

13 MS. MARCY: Wait, he's still talking. Wait, he's
14 still talking.

15 MR. HAMILTON: I don't care if he was still
16 talking.

17 MS. MARCY: Well, wait, you asked him a question,
18 let him answer it. You cut him off.

19 MR. HAMILTON: This is not your deposition, if you
20 want to go back and redirect him, you can do that
21 afterwards.

22 MS. MARCY: So you just are gonna interrupt him if
23 you don't like the answer.

24 MR. HAMILTON: That's not what I'm doing, I'm
25 asking a question. He is not answering questions. He's

1 just rattling on about things he wants to rattle on
2 about. I want to ask a specific question. Can I ask you
3 a specific question?

4 THE WITNESS: Proceed.

5 BY MR. HAMILTON:

6 Q. Okay. The specific question I want to ask
7 you is, you would agree with me, because you said this
8 earlier on in your deposition testimony, that all these
9 circumstances or situations are factually distinct,
10 correct?

11 A. I don't understand the question.

12 Q. Well, when you are doing scenario-based
13 training, all these different -- there's different
14 scenarios that you encounter as a police officer all the
15 time, correct?

16 A. Yes, sir.

17 Q. You can't provide every scenario during your
18 training, true?

19 A. No, sir, you cannot.

20 Q. Okay. And so, there were -- there were
21 things in this scenario that are different than basically
22 other scenarios you've been involved in with respect to
23 law enforcement, that you've encountered?

24 MS. MARCY: Objection, form.

25 THE WITNESS: Possibly. Like you just said, no